

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: in respect of a preliminary matter in applications made under section 48(1) of the Housing (Scotland) Act 2014

Chamber Reference: FTS/HPC/LA/25/0234 & FTS/HPC/LA/25/3470

Property address: 4 Knowe Cottage, Kirkconnel, DG24 6NN (“the Property”)

The Parties

Mr James Donnelly, 9 Townhead Street, Thornhill, DG3 5NL (“the Tenant”)

Challenge Ltd., Challenge House, 46 Nottingham Road, Mansfield, Nottinghamshire, NG18 1BL (“the Letting Agent”)

Tribunal Members

Ms H Forbes (Legal Member)

Mrs H Barclay (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined as a preliminary matter that the Letting Agent is not a relevant letting agent in respect of the tenancy. The applications cannot proceed and are dismissed. The decision is unanimous.

1. The Tenant made two applications against the Letting Agent alleging failures to comply with various paragraphs of the Code of Practice for Letting Agents. Application FTS/HPC/LA/25/023 was made in the period between 29th January and 29th April 2025. Application FTS/HPC/LA/25/3470 was received on 12th August 2025. The applications were conjoined to be heard together.
2. Both parties lodged written representations.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 30th September 2025. The Tenant was in attendance and represented by Mrs Agnes Parker. The Letting Agent was represented by Ms Nicole Daley.

4. The Tribunal explained the purpose of the CMD and that there was a preliminary matter to be determined concerning whether the Letting Agent was the correct Respondent in this case. Mrs Parker explained that the Letting Agent is a registered letting agent, as indicated by the extract from the Scottish Letting Agent Register submitted with the applications, which shows the Letting Agent is authorised to carry out letting agency work. The Tenant was never notified that there was a letting agent. The tenancy agreement does not mention a letting agent. The Letting Agent registered in March 2018, but the Tenant was not informed.
5. Ms Daley confirmed that the Letting Agent did not manage this tenancy. The only services provided were advertising the Property for let, telephone enquiries and vetting of prospective tenants on behalf of Inkersall Investments Ltd. ("the Landlord"). The Landlord continued to be responsible for all repairing matters and collection of rent. Ms Daley said Mr James Woodcock, who is employed by the Landlord, was the person who managed the Property predominantly.
6. The Tribunal agreed to schedule a preliminary hearing to consider the matter of whether the Letting Agent is a relevant letting agent for the purposes of these applications.
7. The Tenant's representative lodged further written representations and productions following the CMD.

The Hearing

8. A hearing took place by telephone conference on 30th March 2026. The Tenant was in attendance and represented by Mrs Agnes Parker. The Letting Agent was represented by Ms Nicole Daley.
9. Mrs Parker referred to the registration details showing that the Letting Agent is registered as a letting agent with the Scottish Government and has been since 31st January 2018. Mrs Parker said she had been unable to obtain any further information in respect of the registration, such as a copy of the application or the names of senior managers, due to data protection legislation. It was Mrs Parker's position that the Tenant should have been notified that the Letting Agent had been appointed to manage the Property. The Letting Agent had been involved in putting the tenancy agreement in place at the start of the tenancy. The directors of the Letting Agent are the same as those of the Landlord. Landlord registration shows no letting agent appointed for this property. Mrs Parker said no one knew the Letting Agent had been appointed.
10. Mrs Parker referred to other Tribunal applications between the Tenant and the Landlord. Asked by the Tribunal why the Letting Agent had not been referred to within these applications, Mrs Parker said no one was aware at that time that there was a letting agent.

11. Mrs Parker said the Tenant would wish to have a full hearing if it was determined that the Letting Agent was not the correct Respondent. The Tribunal explained that the application can only be made against a letting agent. If the Letting Agent was not appointed as a letting agent to manage the Property, and is not, therefore, a relevant letting agent in respect of the tenancy, the applications will be dismissed, and the Tenant should consider whether there are other options open to them to proceed against the Landlord.
12. Ms Daley said it was difficult to prove a negative. The Letting Agent is not appointed to manage this tenancy. They provided services including advertising the Property for let, telephone enquiries and vetting of prospective tenants, but were not involved any further after that stage. The Landlord manages the tenancy on their own behalf. The Landlord's employee, Mr James Woodock, is responsible for the management of the tenancy.

Findings in Fact

13.

- (i) The Tenant entered into a short assured tenancy with the Landlord which commenced on 16th May 2016 for a period of six months and continued thereafter on a weekly basis.
- (ii) The Landlord and Letting Agents are separate companies with the same directors.
- (iii) The Letting Agent was involved in advertising the Property for let, telephone enquiries and vetting of prospective tenants prior to the commencement of the tenancy.
- (iv) Thereafter, the Landlord has managed the tenancy without the services of a letting agent.
- (v) The Letting Agent was not appointed by the Landlord to carry out ongoing letting agency work in relation to the Property.
- (vi) The Letting Agent is not a relevant letting agent in respect of the Property.
- (vii) The application cannot proceed against the Letting Agent as they are not a relevant letting agent in respect of the Property.

Determination and Reasons for Decision

14. The Housing (Scotland) Act 2014 ("the 2014 Act") introduced the Letting Agent Code of Practice ("the Code"), which sets out the standards expected of letting agents operating in Scotland in how they manage their business and provide their services. Every letting agent must comply with the Code.

- 15.** The 2014 Act provides at section 48 that a tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Code. Where a tenant makes an application, a relevant letting agent is a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant.
- 16.** In this case, the Letting Agent may have fulfilled the description of ‘relevant letting agent’ during the process of marketing and advertising of the Property, and the vetting of the prospective tenants; however, the Code was not in place at that time, and the complaints before the Tribunal do not appear to include any complaints in respect of that period.
- 17.** No evidence has been provided that (i) the Landlord appointed the Letting Agent to manage the Property at any time before or during the existence of the Code; or (ii) that the Letting Agent managed the Property throughout the tenancy. There is no doubt that the Letting Agent is a registered letting agent who shares the same address as the Landlord. The directors of the Letting Agent company and the landlord company are the same, but they are two distinct companies. The fact that the Letting Agent was registered as a letting agent in 2018 does not mean that they were appointed to manage all tenancies owned by the Landlord.
- 18.** As the Letting Agent is not a relevant letting agent for the purposes of the tenancy or the applications, the applications cannot proceed and must be dismissed.

Decision

- 19.** The applications are dismissed.

Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Helen Forbes _____
Legal Member **Date**

2nd April 2026